U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13741081

Date: SEP. 15, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational

interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director denied the petition, in part, concluding that the Petitioner had not sufficiently established the substantial merit and national importance of her proposed endeavor as required by *Dhanasar*'s first prong. *See Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner asserts that USCIS "did not give due regard" to the evidence submitted prior to the denial of the petition, such as the Petitioner's work plans and statements, evidence of the Petitioner's previous work activities in the field, and industry articles and reports. For the reasons discussed below, we withdraw the Director's determination that the Petitioner's endeavor is without substantial merit but agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[5]

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner asserts that she intends to "advance [her] career as an engineer and business manager, by promoting cross-border commercial transactions what will enhance, substantially, the United States economy." She explains that her career encompasses aspects of business management, real estate, engineering, information technology (IT), and project management, and that she would realize her endeavor through operating H-P-, a Florida corporation that she jointly owns with her spouse. According to her resume, she is H-P-'s "senior vice president," and her main responsibilities within the organization are to "[p]rovide reliable and state of the art infrastructure and interior design services, buil[d] solid relationship[s] with clients and grow [the] services portfolio."[6] The Petitioner further states that through her endeavor she will:

> [O]ffer my expertise to create businesses and continue to provide consulting, cross-border acculturation, [and] technical support for new developments. . . by bringing together innovation, technology, sustainability, strategic planning, and project management, as well as a complete portfolio of interior decoration and modeling solutions for the residential, commercial and hospitality markets in the U.S. . . Currently my company owns 1 apartment in [redacted] and 3 pieces of land in [redacted] Florida. I am offering my company's apartment for short term rental to my clients, and I intend to build further rental and investments properties on plots of land in [redacted] Construction on these properties will mean employment and job opportunities for U.S. workers in the construction and engineering industries. Once

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The Petitioner established that she holds the foreign degree equivalent of a United States baccalaureate degree and has at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

[5] While we may not discuss every document submitted, we have reviewed and considered each one.

[6] We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether she satisfies the *Dhanasar* framework, she need not have a job offer from a specific employer as she is applying for a waiver of the job offer requirement.

these properties are completed, they will serve as investment opportunities for my company's clients.

The record also includes articles and reports which examine issues relevant to the importance of immigrant entrepreneurship in the United States, such as the economic significance of companies founded by immigrants and the impact of immigrant entrepreneurs as economic contributors. We conclude that the Petitioner's proposed work as an entrepreneur involved in real estate development, interior design, remodeling, and decorating has substantial merit. We withdraw the Director's conclusion to the contrary.

Turning to the determination of whether the Petitioner's endeavor is of national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In her appeal brief, the Petitioner asserts that "as a multiskilled professional, with highly qualified experience and expertise in the engineering, business management, real estate, IT and project management fields. . . there is no doubt that [she] would work in the United States in an area of national importance, capable of producing substantially positive effects."[7] Notably, the Petitioner's experience in her field relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner emphasizes that since her company's founding in 2016, she has been hired by multiple clients to "provide interior design and remodeling services," and that some of her clients "own numerous real estate properties in the U.S. market, which they mostly use, or rent out, for vacation purposes," indicating "that through her interior decorating and remodeling projects, she adds value to her clients' properties, thus increasing their overall market worth, and improving their return on investment." She further claims that her proposed endeavor "will produce significant national benefits, due to the ripple effects of her professional activities in the business arena."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner's statements reflect her intention to operate her company which offers residential real estate

[7] Similarly, the Petitioner provides reference letters from former employers and work colleagues who outline her work accomplishments and make general statements that assert her services would be beneficial should she immigrate to the United States. Clearly, the letter writers hold the Petitioner in high regard. However, the submitted letters do not sufficiently establish the prospective impact of the specific endeavor that the Petitioner will focus on should this petition be approved. The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters to determine whether they support the petitioner's eligibility. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990).

development services, as well as interior design, decorating, and remodeling services to its clients, she has not provided sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her company, business partnerships, and clientele to impact her field or the U.S. construction and interior design industries more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to pursue has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. Specifically, she has not shown that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. She documents that her company has enjoyed a measure of success in performing services for a variety of clients, and claims (without supporting evidence) that her company already employs three individuals in the United States, contending that her company's staffing "will rise steadily as her company's operations progress." While the submitted evidence suggests that her company might have growth potential, the record does not substantiate that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

In addition, although the Petitioner asserts that H-P- employs three U.S. workers, she has not offered sufficient evidence that the area where her company will operate is economically depressed, that she would utilize a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increases in employment or investment attributable to her company's operations stand to substantially affect economic activity or tax revenue in Florida or nationally. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[8]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[8] It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).